



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-RC

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 18 2012

George L. Gomez
Patsy A. Gomez
6300 CR 271
Westcliffe, Colorado 81252

Re: Final Signed Environmental Covenant and Settlement Agreement
for the Terrible Mine Site, Ilse Mining District, EPA Site Id.
08MV.

Dear Mr. and Mrs. Gomez:

Enclosed is the signed Settlement Agreement for Recovery of Past Response Costs (Settlement Agreement) entered into between you and the United States Environmental Protection Agency (EPA) and the Environmental Covenant entered into between you and the Colorado Department of Public Health and Environment (CDPHE).

Please note that the Settlement Agreement contains specific information regarding when the Environmental Covenant is to be recorded. Although the Settlement Agreement requires you to record the Environmental Covenant and provide copies to CDPHE and EPA, CDPHE already recorded the Environmental Covenant for you. Therefore, you do not need to record the Environmental Covenant or send any copies to the CDPHE or EPA.

Pursuant to Paragraph 32 of the Settlement Agreement, the public comment period for the Settlement Agreement has closed, and the comments received do not require modification or withdrawal by the United States from this Settlement Agreement.

Feel free to call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Amelia Piggott", is written over a horizontal line.

Amelia Piggott
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1129
Phone: 303/312-6410
Fax: 303/312-6953

Cc: Laurianne Jackson (w/o enclosures)
John Works (w/enclosures for records)



Printed on Recycled Paper

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
Terrible Mine Site)	U.S. EPA Region <u>08</u>
Ilse Mining District)	CERCLA Docket No. <u>CERCLA-08-2012-0003</u>
Custer County, Colorado)	
)	
Mr. George L. Gomez)	
Mrs. Patricia A. Gomez)	PROCEEDING UNDER SECTION
SETTLING PARTIES)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. This authority was further redelegated to the supervisors for the Legal Enforcement Program and the Technical Enforcement Program in the Office of Enforcement, Compliance and Environmental Justice by EPA Region 8 Delegation 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Deputy Section Chiefs of the Environmental Enforcement Section in the Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA and Mr. George L. Gomez and Mrs. Patricia A. Gomez ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Terrible Mine Site ("Site"), also known as the Ilse Mine Site, located at 6300 CR 271, Westcliff, Colorado. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. In particular, EPA excavated and consolidated contaminated soils, replaced these soils with clean soil, rock and gravel and revegetated areas on the Property. EPA also constructed an on-Site repository for the consolidated soils and tailings covered with a combination of rip-rap, a soil cap and vegetation. Finally, EPA established an improved drainage feature on the Property.

5. In performing response actions, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Parties have no financial ability to pay for response costs incurred at the Site.

8. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties, in accordance with this Settlement Agreement, do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to resolve their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement, which are defined in CERCLA or in regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVI.

d. "Environmental Covenant" shall mean the enforceable agreement between the Colorado Department of Public Health and Environment and Settling Parties restricting the future uses of the Property, pursuant to C.R.S. §25-15-301, *et seq.*

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

f. "Financial Information" shall mean those financial documents identified in Appendix A.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Parties.

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

k. "Settling Parties" shall mean George L. Gomez and Patsy A. Gomez.

l. "Site" shall mean the Terrible Mine Site, encompassing approximately 7 acres, located at 6300 CR 271 in Custer County, Westcliff, Colorado, as depicted generally on the map attached hereto as Appendix B.

m. "State" shall mean the State of Colorado, including its departments, agencies, and instrumentalities.

n. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI SITE ACCESS AND ENVIRONMENTAL COVENANT

12. With respect to any real property included within the Site that is now owned or controlled by Settling Parties, Settling Parties shall:

a. Provide EPA and the State, and their representatives and contractors, access to such property and to any other property owned or controlled by Settling Parties to which access is determined by EPA or the State to be required for the purpose of conducting any response activity related to the Site, including but not limited to:

1. Monitoring, investigation, removal, remedial or other activities;
2. Verifying any data or information submitted to EPA or the State;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples; and
5. Assessing the need for, planning, or implementing response actions at or near the Site.

b. Refrain from using such property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action already performed or instituted at the Site, or the response actions to be performed or instituted in the future.

13. Environmental Covenant.

a. Concurrent with the execution of the Settlement Agreement, Settling Parties shall execute the Environmental Covenant attached hereto as Appendix C.

b. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Settling Parties shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Custer County Recorder's Office. Settling Parties shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the Colorado Department of Public Health and Environment (CDPHE), EPA, the County of Custer, any "Holder," and any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, and any other person designated by CDPHE.

c. Settling Parties must comply with the Environmental Covenant, including all activity and use restrictions on the Site property.

14. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

15. Transfer of the Property. In the event of a Transfer of the Property or any portion thereof, Settling Parties shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA and Settling Parties modify this Agreement in writing. Nothing in this Paragraph obligates Settling Parties to Transfer the Property or any portion thereof

VII FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. Stipulated Penalty.

a. If Settling Parties do not comply with their obligations set forth in Paragraphs 12 and 13 above, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$1,000.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Party making payment, the Site name, the EPA Region and Site ID # 08MV. The Settling Parties shall send the check (and any accompanying letter) to:

REGULAR MAIL:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

OVERNIGHT MAIL:

U.S. Bank
Government Lockbox 979077
US Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
314-418-1028

WITH A COPY TO:

Mike Rudy, 8ENF-RC
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. At the time of each payment, Settling Parties shall send notice that such payment has been made to EPA in accordance with Section XIII (Notices and Submissions) and by email to acctreceivable.cinwd@epa.gov. Such notice shall identify EPA Region 8 and Site ID #08MV and the EPA Docket Number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the

noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, they shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from performance of any other requirements of this Settlement Agreement.

VIII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon execution and recordation of the Environmental Covenant by Settling Parties, in accordance with Paragraph 13. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Parties' ownership or operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

f. liability arising from failure to comply with the Environmental Covenant described in Paragraph 13 and attached hereto as Appendix C.

21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 29(b), is false or, in a material respect, inaccurate.

22. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Except as provided in Paragraph 25, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. Settling Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations. In the event that a Settling Parties' waiver of claims becomes inapplicable in accordance with Paragraph 25, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have resolved their liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. CERTIFICATION

29. Settling Parties hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of a suit against them regarding the Site and that they have fully complied with any and all EPA requests for documents or information regarding the Site and Settling Parties' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Parties execute this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Laurianne M. Jackson
Legal Enforcement Program
USEPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

and

Mike Rudy
Technical Enforcement Program
USEPA Region 8
1595 Wynkoop Street (8ENF-RC)
Denver, Colorado 80202

Only for notice required by Paragraph 16.c.:

Martha Walker
USEPA Region 8
1595 Wynkoop Street (8TMS-F)
Denver, Colorado 80202-1129

As to Settling Parties:

Mr. George L. Gomez and Mrs. Patsy A. Gomez
6300 CR 271
Westcliff, Colorado 81252

XIV. INTEGRATION/APPENDICES

31. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, Settlement Agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling Parties.
[This is confidential information based on privacy, not available for public release/review.]

Appendix B is a map of the general Site Boundary Area.

Appendix C is the Environmental Covenant.

XV. PUBLIC COMMENT

32. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVI. EFFECTIVE DATE

33. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Lorraine M. Ross
Lorraine Ross, Acting Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

Date: 3 January 2012

By: Kelley Land
Kelley Land, Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

Date: 1/13/2012

THE UNDERSIGNED SETTLING PARTIES enter into this Settlement Agreement in the matter of the Terrible Mine Site, Custer County, Westcliff, Colorado.

George L. Gomez

By: George L. Gomez
George L. Gomez, Owner

Date: 12-28-11

Patricia A. Gomez

By: Patsy A. Gomez
Patsy A. Gomez, Owner

Date: 12/27/2011

APPENDIX A

Response to EPA's Request for Financial Information dated September 21, 2010 from George L. Gomez including:

- Individual Ability to Pay Form
- 2009 SSA-1099-Social Security Benetit Statement
- IRS Tax Return Transcripts for 2006, 2007, 2008 and 2009
- 2010-2011 Ability to Pay Declaration

* This is confidential information based on privacy, not available for public release/review.

Appendix B
Terrible Mine Site Map

APPENDIX B

TERRIBLE MINE SITE



Appendix C
Environmental Covenant

218400

00218400 Feb 15, 2012 03:35P 8: 687 P: 303
Debbie Livenessood-Custer, County Clerk Colorado

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

George L. Gomez and Patricia A. Gomez ("Grantors") grant an Environmental Covenant ("Covenant") this 28 day of December, 2011 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, Grantors are the owners of certain property commonly referred to as the Terrible Mine Site, Ilse Mining District, Custer County, Colorado ("Site"), located at 6300 CR 271, Westcliff, Colorado 81252, more particularly described in the Warranty Deed labeled Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601, *et seq.* (CERCLA), the Property is the subject of enforcement and removal action pursuant to an Administrative Settlement Agreement executed concurrent with this Environmental Covenant, an Action Memorandum dated August 19, 2010 and an Action Memorandum Amendment dated October 26, 2010, which can be found on record at the United States Environmental Protection Agency (EPA); and

WHEREAS, the removal action conducted on the Property entailed excavating and consolidating contaminated soils, replacing with clean soil, rock and gravel and revegetating specific areas on the Property, construction of an engineered repository for the consolidated soils with a combination of rip-rap, a soil cap and vegetated cover, and improved drainage feature on the Property. The location of the excavated areas and engineered repository and the location of the improved drainage feature within the Property are more particularly described in Attachment B listing the Longitude and Latitude, Decimal Degrees North American Datum 83 and generally shown with identified Global Positioning System points on Attachment C (hereinafter referred to as the "Site Boundary Area") and

WHEREAS, EPA and the Department have determined that activity and use restrictions on the Site Boundary Area are necessary to assure the long-term integrity of the CERCLA removal action; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by restricting future uses of and activity on the Site Boundary Area that can affect the CERCLA removal action; and

WHEREAS, Grantors desire to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Grantors and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein, for the benefit of the Department, Grantors, and EPA as a third party beneficiary.

NOW, THEREFORE, Grantors hereby grant this Covenant to the Department, with EPA as a third party beneficiary, and declare that the Site Boundary Area of the Property as described in Attachment B shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10, below, which shall run with the Property in perpetuity and be binding on Grantors and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Covenant, the term OWNERS means the then current record owners of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

- 1) Activity and Use Restrictions In accordance with the removal action described in the Administrative Record for the Site:
 - a) The Site Boundary Area shall not be used in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action performed at the Site, as set forth in the Action Memorandum including, but not limited to, any use of the Erosion Control Drainage Ditch shown on Attachment C that potentially impacts the proper functioning of the drainage feature.
 - b) Restrictions on activities in the Site Boundary Area of the Property, as shown on Attachment C and more particularly described in Attachment B, shall include no tilling, excavation, grading, construction, or any other activity that disturbs the ground surface without modification of this Covenant pursuant to Paragraph 2 below.
- 2) Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNERS may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this

Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) a proposal to perform additional response action and/or remedial work;
 - b) new information regarding the risks posed by the residual contamination;
 - c) information demonstrating that residual contamination has diminished;
 - d) information demonstrating that an engineered feature or structure is no longer necessary;
 - e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
- 3) Conveyances OWNERS shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property.
 - 4) Notice to Lessees OWNERS agree to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
 - 5) Notification for proposed construction and land use OWNERS shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use for the Site Boundary Area of the Property.
 - 6) Inspections The Department and EPA shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant as provided in § 25-15-322, C.R.S and for conducting environmental sampling, inspecting the removal action and assessing its continued protectiveness pursuant to CERCLA.
 - 7) Third Party Beneficiary OWNERS of the Property and EPA are third party beneficiaries with the right to enforce the provisions of this Covenant as provided in § 25-15-322, C.R.S.
 - 8) No Liability The Department does not acquire any liability under State law by virtue of accepting this Covenant nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.
 - 9) Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322, C.R.S. Grantors and any named beneficiaries may file suit in district court to enjoin actual or threatened violations of this Covenant.
 - 10) Owners' Compliance Certification OWNERS shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNERS' compliance, and any lack of compliance, with the terms of this Covenant.

11) Notices Any document or communication required under this Covenant shall be sent or directed to:

With reference to the Terrible Mine Site, Ilse Mining District (EPA Site No. 08MV)

State of Colorado:

Remediation Program Manager Hazardous Materials and Waste Management Division
HMWMD-RP-B2
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Assistant Attorney General
Natural Resources and Environment Section
Hazardous and Solid Waste and CERCLA Litigation Unit
Colorado Department of Law
1525 Sherman Street, 7th Floor
Denver, CO 80203

And:

EPA:

On-Scene Coordinator (8EPR-ER)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

Regional Institutional Control Coordinator, EPR-SR
U.S. EPA
1595 Wynkoop Street
Denver, CO 80202-1129

OWNERS/GRANTORS:
George L. Gomez and Patricia A. Gomez
6300 CR 271
Westcliff, Colorado 81252

Grantors, have caused this instrument to be executed this 28th day of December, 2011.

George L. Gomez

By: George L. Gomez
Name: George L. Gomez
Title: Owner

Date: 12-28-11

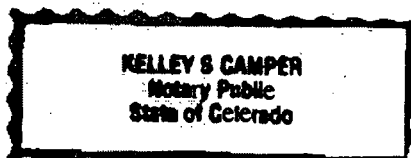
Patricia A. Gomez

By: Patricia A. Gomez
Name: Patricia A. Gomez
Title: Owner

Date: 12/28/2011

STATE OF Colorado)
) SS:
COUNTY OF Custer)

The foregoing instrument was acknowledged before me this 28th day of December, 2011 by George L. Gomez on behalf of Grantors.
and Patricia A. Gomez



Kenneth S. Camp
Notary Public

205 S. 6th St.
Address

Westcliffe Co 81052

My commission expires: 05.05.2012

Accepted by the Colorado Department of Public Health and Environment this 30th day of January, 2012

By: [Signature]
Title: Director, Health

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

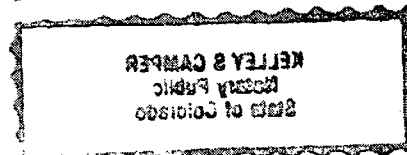
The foregoing instrument was acknowledged before me this 30 day of JANUARY, 2012 by Gary Bushman on behalf of the Colorado Department of Public Health and Environment.

[Signature]
Notary Public

4300 Cherry Creek Dr. So.
Address

Denver, CO 80246

My commission expires: October 24, 2015



Attachment A

Warranty Deed, George L. Gomez and Patsy A. Gomez, Book 441, Page 345, Recorded October 29, 2002, Custer County, Colorado.

Filed for record the
No. **193196**

0193196 10/29/2002 08:07A 8: 441 P: 343
Debbie Livengood-Cunter County Clerk Colorado

WARRANTY DEED

Know all Men by these Presents, That Patrick D. Ryan, as to his undivided one-half (1/2) common interest, of the County of Douglas and State of Colorado, for the consideration of One Dollar and other good and valuable considerations, in hand paid, hereby sell and convey to George L. Gomez and Patsy A. Gomez, in Joint Tenancy, of the County of Bent and State of Colorado, whose mailing address is 502 W. Sixth Street, Las Animas, CO 81054, the following Real Property situate in the County of Custer and State of Colorado, (Assessor's Schedule Number 10129700) to-wit:

THIRTEEN (13) ACRES, MORE OR LESS, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

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LESS THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO, BEING THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 22 NORTH, RANGE 50 WEST, COUNTY OF CUSTER, STATE OF COLORADO.

with all its appurtenances and warrant(s) the title to the same, subject to general taxes for the calendar year 2002 and subsequent years, distribution utility easements, rights of third parties not shown by the public records of which Grantor has actual knowledge, inclusion of the property within any special taxing district, declarations and party wall agreements, and easements, rights-of-way, covenants, restrictions, reservations, mineral rights not owned by Grantor, and grazing leases, of record.

Note: This conveyance is made without any representations or warranties of any kind or nature, express, implied, or statutory, as to the fitness of the Real Property for any particular purpose or as to the condition of the Real Property, and Grantee accepting the Real Property as is, where is, with all faults.

Signed and delivered this 25th day of OCTOBER, 2002.

Patrick D. Ryan
Patrick D. Ryan

STATE OF COLORADO)

County of Custer)

ss. The foregoing instrument was acknowledged before me
this 25th day of October, 2002
by Patrick D. Ryan

B-048

Attachment B

Site Boundary Area located in the Tertible Mine Site, Ilse Mining District

The Site Boundary Area is particularly described by the following Latitude and Longitude Coordinates, Decimal Degrees North American Datum 83:

FID_	X_Lon	Y_Lat	Decimal Degrees North American Datum 83
1	-105.249000	38.217399	
2	-105.248001	38.217498	
3	-105.248001	38.217601	
4	-105.248001	38.217700	
5	-105.248001	38.217800	
6	-105.247001	38.217700	
7	-105.247001	38.217601	
8	-105.247001	38.217498	
9	-105.247001	38.217399	
10	-105.247001	38.217300	
11	-105.247001	38.217201	
12	-105.247001	38.217098	
13	-105.247001	38.216999	
14	-105.247001	38.216899	
15	-105.247001	38.216800	
16	-105.246002	38.216701	
17	-105.246002	38.216598	
18	-105.246002	38.216499	
19	-105.246002	38.216400	
20	-105.246002	38.216300	

21	-105.246002	38.216201
22	-105.246002	38.216098
23	-105.247001	38.216098
24	-105.247001	38.215999
25	-105.247001	38.215900
26	-105.248001	38.216098
27	-105.248001	38.216201
28	-105.248001	38.216300
29	-105.248001	38.216400
30	-105.248001	38.216499
31	-105.248001	38.216598
32	-105.248001	38.216701
33	-105.248001	38.216800
34	-105.248001	38.216899
35	-105.248001	38.216999
36	-105.249000	38.217098
37	-105.247001	38.215999
38	-105.247001	38.215999
39	-105.247001	38.215999
40	-105.247001	38.215900
41	-105.247001	38.215999
42	-105.247001	38.215999
43	-105.247001	38.215999
44	-105.247001	38.215999
45	-105.247001	38.215999
46	-105.246002	38.216201

47	-105.246002	38.216499
48	-105.247001	38.216800
49	-105.247001	38.216899
50	-105.246002	38.216300
51	-105.247001	38.217201
52	-105.247001	38.217498
53	-105.247001	38.217700
54	-105.247001	38.217700
55	-105.247001	38.217700
56	-105.248001	38.217800
57	-105.248001	38.217700
58	-105.248001	38.217700
59	-105.248001	38.217498
60	-105.248001	38.217498
61	-105.249000	38.217399
62	-105.248001	38.216701
63	-105.248001	38.216400
64	-105.248001	38.216300
65	-105.248001	38.216098
66	-105.247001	38.215999
67	-105.246002	38.216098
68	-105.246002	38.216400

Attachment C

Site Boundary Area Map (Repository)

